From: LERS, EOIR (EOIR)

To: LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of CLAD (EOIR); All of OCIJ JLC (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)

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IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
June 22, 2018

White House

- President Trump Issues Executive Order 13841: "Affording Congress an Opportunity to Address Family Separation"

  On June 20, 2018, the President signed an Executive Order stating: "It is the policy of this Administration to rigorously enforce our immigration laws. . . . It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources." The Order provides direction to the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, and other "heads of executive departments and agencies" relating to the detention and custody of alien families "during the pendency of any criminal improper entry or immigration proceedings."

Federal Agencies

DOJ

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DOS

- DOS Posts July 2018 Visa Bulletin

  The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

Supreme Court

OPINION

- Pereira v. Sessions

  No. 17-459, 2018 U.S. LEXIS 3838 (June 21, 2018)

  The Supreme Court reversed the decision of the United States Court of Appeals for the First Circuit, holding that "[a] putative notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings is not a 'notice to appear under section 1229(a),' and so does not trigger the stop-time rule [set forth in 8 U.S.C. § 1229b(d)(1)(A)]." As such, the Board's contrary conclusion in Matter of Camarillo, 25 I&N Dec. 644 (BIA 2011) was abrogated. The Court stated that it "need not resort to Chevron deference, as some lower courts have done, for Congress has supplied a clear and unambiguous answer to the interpretive question at hand."

CERT. GRANTED

- Gonzalez-Longoria v. United States

  No. 16-6259, 2018 U.S. LEXIS 3723 (June 18, 2018)

  The Supreme Court vacated the judgment and remanded the case to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Sessions v. Dimaya, 138 S. Ct. 1204 (2018).

CERT. DENIED

- Martinez Cazun v. Sessions

  No. 17-931, 2018 U.S. LEXIS 3723 (June 18, 2018)

  Question Presented: (1) Whether Chevron authorizes an agency to make policy judgments unconstrained by the statutory text once a statute is determined to be ambiguous; (2) Whether the immigration rule of lenity applies to the meaning of the word "relief" in § 1231(a)(5), thus resolving any ambiguity and precluding any deference under Chevron.

- Garcia Garcia v. Sessions

  No. 17-984, 2018 U.S. LEXIS 3715 (June 18, 2018)

  Questions Presented: (1) Whether "relief" in § 1231(a)(5) can include asylum when it cannot include withholding of removal; (2) Whether the immigration rule of lenity applies to resolve any ambiguity about the meaning of "relief" in § 1231(a)(5) in favor of the noncitizen.

- Garcia v. Sessions

  No. 17-1212, 2018 U.S. LEXIS 3825 (June 18, 2018)

  Questions Presented: (1) Whether deference to an agency interpretation of 8 U.S.C. § 1231(c)(5) to categorically bar applications for asylum when a prior order of removal is reinstated violates the doctrine of constitutional avoidance; (2) Whether deference to an agency interpretation of 8 U.S.C. § 1231(a)(5) to categorically bar applications for asylum when a prior order of removal is reinstated violates United States' treaty obligations; (3) Whether the rule of lenity applies to resolve ambiguity in the interplay between 8 U.S.C. § 1231(a)(5) and 8 U.S.C. § 1158(a).

- Elinzano-Gonzales v. Sessions

  No. 17-1433, 2018 U.S. LEXIS 3778 (June 18, 2018)

  Questions Presented: (1) Whether or not a domestic violence victim's post-traumatic stress disorder (PTSD) condition should work as an exceptional circumstance to excuse the late filing of an asylum claim beyond the one-year period after her arrival in the United States; (2) Whether or not requiring a domestic violence victim to substantiate her claim of post-traumatic stress disorder (PTSD) condition with medical documentation despite her credible testimony impermissibly heightens the standard to prove an asylum claim and denies her due process; (3) Whether or not the Court's decision to review only the Board of Immigration Appeal's (BIA) denial of petitioner's 2016 motion to reopen, and not the agency's underlying decisions runs afoul of prevailing Court decisions allowing the Court to

review the Immigration Judge's decision where, as here, the BIA adopts the decision of the Immigration Judge and merely supplements the Immigration Judge's decision; (4) Whether or not the BIA's and the Court's decisions to deny petitioner her claims for asylum and withholding of removal were supported by substantial evidence on record when the 2014 Country Report and seven factual incidents of persecution suffered by petitioner at the hands of her abusive husband were clearly ignored and not considered; (5) Whether or not the 2014 Country Report submitted several years after the 2008 merits hearing showing "serious and widespread problem" of domestic violence in the Philippines, coupled by the December 2015 and January 2016 activities by petitioner's husband showing escalating determination to threaten and cause trouble to petitioner and her family constitute "changed country conditions" to justify the filing of a second motion to reopen; (6) Whether or not it is reasonable for an asylum applicant who has suffered past persecution, as in petitioner's case, to internally relocate somewhere else in the country where she suffered persecution.

Third Circuit

- Osario-Martinez v. Attorney Gen. of the United States

  No. 17-2159, 2018 WL 3015041 (3d Cir. June 18, 2018) (Judicial Review)

  The Third Circuit concluded that 8 U.S.C. § 1252(e)(2) operates as an unconstitutional suspension of the writ of habeas corpus as applied to Special Immigrant Juvenile (SIJ) status designees seeking judicial review of orders of expedited removal.

Fourth Circuit

- Martinez v. Sessions

  No. 17-1301, 2018 WL 2991848 (4th Cir. June 15, 2018) (CIMT)

  The Fourth Circuit granted the PFR, holding that theft under Md. Code Ann., Crim. Law § 7-104 categorically is not a CIMT (overbroad and indivisible). The court determined that the statute's definition of "deprive" includes temporary takings that appropriate just a "part" of the property's value and permits the state to obtain a theft conviction for joyriding. The court concluded that Maryland's standard is lower than the temporary takings that "substantially erode" the value, which were held to be turpitudinous in Matter of Diaz-Lizarraga, 26 I&N Dec. 847 (BIA 2016).

Fifth Circuit

- United States v. Burris

  No. 17-10478, 2018 WL 3015050 (5th Cir. June 18, 2018) (Crime of Violence)

  The Fifth Circuit concluded that simple robbery under Texas Penal Code 29.02(a) does not require the use of force and therefore is not a "violent felony" under 18 U.S.C. § 924(e)(2)(B)(i), which is analogous to 18 U.S.C. § 16(a).

Ninth Circuit

- United States v. Reinhart

  No. 16-10409, 2018 WL 3016942 (9th Cir. June 18, 2018) (Aggravated Felony)

The Ninth Circuit concluded under the categorical approach that Cal. Penal Code § 311.11(a), possession or control of matter depicting a minor engaging in or simulating sexual conduct, is overbroad compared to the federal statute, 18 U.S.C. § 2252(a)(4)(B), and indivisible. The court also held that Cal. Penal Code § 311.3(a), sexual exploitation of a child, is overbroad and indivisible. The statute's definition of "sexual conduct," which includes defecation or urination for the purpose of sexual stimulation of the viewer, is overbroad compared to the federal definition of "sexually explicit conduct" under 18 U.S.C. § 2256(2)(A). Lastly, the statute is indivisible because the jury need not unanimously decide what particular sexual conduct is depicted, but must only decide whether the materials portray sexual conduct. Note: section 101(a)(43)(I) of the Act lists "an offense described in" 18 U.S.C. § 2252.

- Rodriguez-Huerta v. Sessions

  No. 15-70137, 2018 WL 2978979 (9th Cir. June 14, 2018) (unpublished) (WOR; CAT)

  The Ninth Circuit granted the PFR, stating that the IJ erred because "he did not consider or find facts related to [the petitioner's] argument that he would be targeted as a former government informant." The IJ also did not make any findings as to the government's willingness or ability to control persecutors, and the BIA made additional findings of fact that the IJ did not make. Regarding CAT, the court stated the BIA and the IJ erred in not considering the Country Conditions report.

Tenth Circuit

- Jimenez v. Sessions

  Nos. 16-9555 & 17-9527, 2018 WL 3029071 (10th Cir. June 19, 2018) (CIMT)

  The Tenth Circuit denied for lack of jurisdiction the petitioner's PFR from an order denying sua sponte reopening, and granted the petitioner's PFR from a final removal order, stating that the BIA incorrectly determined that the petitioner's conviction for first degree criminal trespass under Colo. Rev. Stat. § 18-4-502 was a CIMT and concluding that the statute is not divisible as to the particular alternative ulterior offenses.

- Bedolla-Zarate v. Sessions

  No. 17-9519, 2018 WL 3015037 (10th Cir. June 18, 2018) (Aggravated Felony)

  The Tenth Circuit denied the PFR, concluding that third degree sexual abuse of a minor under Wyo. Stat. Ann. § 6-2-316(a)(i) is a sexual abuse of a minor aggravated felony under section 101(a)(43)(A) of the Act.